APPEAL NO. 030324
FILED APRIL 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on January 8, 2003. The hearing officer determined that the respondent (claimant) sustained an injury to his skull that resulted in incurable insanity or imbecility, thereby entitling him to lifetime income benefits (LIBs). The appellant (self-insured) appeals, requesting reversal on the grounds that the claimant failed to sustain his burden of proving that he suffered an injury to his skull and that he failed to establish that he suffers from imbecility that was caused by the compensable incident. The self-insured challenges Findings of Fact Nos. 5, 6, 7, 8, 9, 12, 13, 15, 16, and 18 and Conclusion of Law No. 3. The claimant responds, urging affirmance. The claimant further asserts that he must prevail as a matter of law, as the self-insured fails to clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought, as required by Section 410.202(c).

DECISION

Reversed and rendered.

We first address the question of the adequacy of the self-insured's request for review. Section 410.202(c) discusses the form of appeals and responses. Early on, and repeatedly since, we have held that no particular form of appeal is required and that an appeal, even though terse and unartfully worded, will be considered. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993; and cases cited therein. We have also held that appeals that lack specificity will be treated as challenges to the sufficiency of the evidence. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. We find that the appeal is adequate in the present case to raise the issue of whether there was sufficient evidence to support the hearing officer's decision.

On _____, the claimant slipped and fell backward, striking his head on a metal table and sustaining injuries to his head, ear, neck and low back. He also has a frozen shoulder, drop foot, and various other complaints. Among the hearing officer's Findings of Fact are:

FINDINGS OF FACT

5. The compensable injury of _____ includes an injury to the mastoid bone, a part of Claimant's skull.

6. As a result of the injury of _____, Claimant has [sic] a radical mastoidectomy.

7. As a result of the injury of _____, Claimant has become a feebleminded person with a mental age of 3 to 7 years.

The self-insured first asserts that the evidence does not establish that the claimant sustained an injury to the skull. With respect to this case, which is based upon a compensable injury which occurred prior to September 1, 1997, Section 408.161(a)(6) provides that LIBs are payable for "an injury to the skull resulting in incurable insanity or imbecility." The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 951336, decided September 20, 1995, used the following the definition of "skull" contained in DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, at page 1535 (28th ed. 1994) (hereafter DORLAND'S): "The bony framework of the head, composed of the cranial bones and bones of the face."

The evidence admitted at the CCH shows that the claimant sustained an injury to the mastoid antrum, resulting in chronic otits media, damage to the eardrum and cholesteatoma. A CT scan showed "non-aeration to the mastoid bone." Dr. M, an otolaryngologist, treated these conditions by performing a mastoidectomy and a tympanoplasty. The "mastoid antrum" is an air space within the temporal bone and ear. DORLAND'S, page 101. A "mastoidectomy" is the complete removal of the air cells of the mastoid and a "tympanoplasty" is "the surgical reconstruction of the hearing mechanism of the middle ear, with restoration of the drum membrane . . . ." DORLAND'S, pages 993 and 1767. Dr. M indicated that the claimant "has done well postoperatively as far as this is concerned." It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This equally is true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The medical evidence in this case sufficiently supports the hearing officer's determination that there was an injury to the skull. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The self-insured next questions whether the physically traumatic injury to the skull resulted in incurable insanity and imbecility. According to the hearing record, the claimant did well after the surgeries to his temporal or mastoid bone and other structures involving the ear. Additionally, the claimant was seen by at least seven doctors who diagnosed his psychological deterioration to be a result of brain trauma and/or closed head injury or concussion. Not one doctor suggested the claimant's cognitive impairment stemmed from the injury to his ear or the conditions related to the mastoid or temporal bone. We previously held that the version of Section 408.161(a)(6) which was in effect for injuries that occurred on or before September 1, 1997, "does not include all organic or psychological brain injuries, nor is imbecility or insanity resulting from causes other than injury involving the skull within its terms." Appeal No. 951336, *supra.* Although the claimant in that case had a brain injury resulting from being struck by lightning, he was unable to prove that he had a skull injury and thus did not prove

entitlement to LIBs. In this case, the claimant has established that he had an injury to the skull, but the medical evidence establishes that it was the trauma to the brain, not the injury to the skull, which led to the claimant's mental deterioration. The law in effect at the time that this claimant was injured did not provide for LIBs when there was a brain injury resulting in incurable insanity or imbecility, only when there was a skull injury resulting in incurable insanity or imbecility. We note that the Legislature changed the law for compensable injuries occurring on or after September 1, 1997, to provide for LIBs in the case of a physically traumatic injury to the brain resulting in incurable insanity or imbecility, but the change does not apply to this claimant.

We will reverse the hearing officer's determination if we find that it is so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*; Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Based upon the medical evidence in this case, that the mental deterioration is due to brain trauma, and not due to the skull injury, the hearing officer's determination that the claimant met his burden of proof with regard to entitlement to LIBs for an injury to the skull resulting in incurable insanity or imbecility is so against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, we reverse the decision that the claimant is entitled to LIBs, and render a new decision that the claimant is not entitled to LIBs.

The true corporate name of the insurance carrier is **a governmental entity that self-insures, either individually or collectively through the TEXAS ASSOCIATION OF SCHOOL BOARDS RISK MANAGEMENT FUND** and the name and address of its registered agent for service of process is

RH
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge